

[\*O'Brien v. Stone & Webster Engineering Corp.\*](#), 84-ERA-31 (Sec'y June 29, 1990)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: June 29, 1990  
CASE NO. 84-ERA-31

IN THE MATTER OF

WILLIAM T. O'BRIEN,  
COMPLAINANT,

v.

STONE & WEBSTER ENGINEERING CORP.,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT

Administrative law Judge (ALJ) Stuart A. Levin issued a Recommended Decision and order on February 28, 1985, in the captioned case which arises under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982). The ALJ's decision found merit to the complaint and ordered Complainant's reinstatement and other relief. While the case was pending for final review before the Secretary, *see* 29 C.F.R. § 24.6 (1969), counsel for Respondent provided notice that a settlement had been reached and filed a Stipulation of Dismissal, requesting that the case be dismissed with prejudice. On May 30, 1990, I ordered that the

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[Page 2]

settlement be submitted for review in order to determine whether its terms are fair, adequate and reasonable, and, as such, constitute proper grounds for dismissal of the case. On June 21, 1990, counsel for Respondent submitted a copy of the Settlement Agreement dated June 28, 1985, and signed by Complainant individually and by counsel for Respondent.

The terms of the agreement have been carefully reviewed. I note that the agreement appears to encompass the settlement of matters arising under various laws, only one of which is the EPA. *See, e.g.,* Settlement Agreement ¶¶ 2 and 3. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, November 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegation in this case that Respondent violated the ERA.

Paragraph 3 of the agreement provides, *inter alia*, that Complainant releases Respondent from

all claims, actions, causes of action, suits, debts sums of money, accounts, covenants, contracts, agreements, promises, representations, damages and demands whatsoever in law or in equity which he or his predecessors or successors or assigns every (sic) had, now have, *or hereafter can, shall, or may have* against the aforesaid . . . . including, but not limited to, any such claims, arising out of, or connected with, any act, matter, transaction, cause or thing whatsoever asserted in, related to, referred to, or involved in Docket No. 84-ERA-31 before the U.S. Department of Labor.

(Emphasis added). The above-quoted language might be construed as waiving Complainant's right to file whistleblower claims under the ERA based on future employer actions. *Cf. Tinsley v. 179 South Street Venture*, Case No. 89-CAA-3, Sec. Order, March 14, 1990, slip op. at 2. Because such a waiver would be contrary to public policy, I interpret the release provision quoted above as releasing Respondent from liability under the ERA only with respect to Complainant's reassignment and subsequent discharge by Respondent on or about June 14, 1984. *Tinsley*, slip op. at 2.

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[Page 3]

Paragraph 7 of the Settlement Agreement provides that the agreement "shall be governed by and construed in accordance with the laws of the District of Columbia." For the reasons stated in *Stites v. Houston Lighting & Power*, Case Nos. 89-ERA-1, 89-ERA-41, Sec. Order, May 31, 1990, slip op. at 3, I interpret Paragraph 7 as not restricting in any way the authority of the Secretary to initiate enforcement proceedings, nor as restricting the jurisdiction of the district court over such proceedings, under 42 U.S.C. § 5851(d). *See also* 29 C.F.R. § 24.8.

Wherefore, upon review of the Settlement Agreement, as qualified above, I find that it is fair, adequate and reasonable. The agreement is approved as interpreted and the case is hereby DISMISSED with prejudice. *See* Settlement Agreement, ¶ 1; Stipulation of Dismissal.

SO ORDERED.

ELIZABETH DOLE  
Secretary of Labor

Washington, D.C.